

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 7
: :
SHARON MARIE WINSTON, : CASE NO. 15-66160-JRS
: :
Debtor. : :
: :

TRUSTEE'S MOTION TO PAY EXCESS LIFE INSURANCE PROCEEDS TO DEBTOR

COMES NOW S. Gregory Hays, as Chapter 7 Trustee ("Trustee") for the bankruptcy estate (the "Bankruptcy Estate") of Sharon Marie Winston ("Ms. Winston"), by and through undersigned counsel, and files *Trustee's Motion to Pay Excess Life Insurance Proceeds to Debtor* (the "Motion"), and respectfully shows the Court the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).

Background and Relief Requested

2. On August 25, 2015 (the "Petition Date"), Ms. Winston filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, modified, or supplemented, the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Court"), Chapter 7 Case No. 15-66160-JRS (the "Bankruptcy Case").

3. Trustee was appointed and remains the duly acting Chapter 7 Trustee for the Bankruptcy Estate.

4. On September 30, 2015, Trustee conducted and concluded the meeting of creditors, held under 11 U.S.C. § 341 (a).

5. On Ms. Winston's *Schedule A – Real Property*, Ms. Winston scheduled an interest in that certain real property with a common address of 1117 Berry Hill Drive, Lithonia, GA 30058 (the “**Property**”) with a scheduled interest in the property of \$102,200.00. [Doc. No. 1 at Page 14 of 43]. Upon information and belief, Ms. Winston owns a one-half interest in the Property.

6. On Ms. Winston's *Schedule D – Creditor's Holding Secured Claims*, Ms. Winston scheduled a claim by Wells Fargo for \$106,000.00 secured by the Property. [Doc. No. 1 at Page 19 of 43].

7. Ms. Winston did not claim an exemption in the Property, but Trustee determined that the Bankruptcy Estate's interest (the “**Interest**”) in the Property had a value of approximately \$10,000.00 to \$15,000.00 after accounting for: (a) the costs of a sale (i.e., broker's commission); (b) Ms. Winston's available but unclaimed exemption; (c) litigation with the co-owner under Section 363(h); and (d) payment to the Wells Fargo for its first position security interest.

8. On her *Schedule B – Personal Property*, Ms. Winston scheduled an interest in a Whole Life Insurance Policy (Policy No. xxx-282-239) (the “**Life Insurance Policy**”) with a value of \$15,000.00. [Doc. No. 1 at Pages 15-16 of 43].

9. On her *Schedule C - Property Claimed as Exempt (“Schedule C”)*, Ms. Winston claimed an exemption in the cash value of the Life Insurance Policy in the amount of \$8,230.00 under O.C.G.A. § 44-13-100(a)(6) (the “**Life Insurance Exemption**”).

10. As part of his investigation of Ms. Winston's financial affairs, Trustee determined that the cash value of the Policy was \$32,143.90 ("Cash Value"). As a result, the non-exempt value of the Policy for the Bankruptcy Estate was \$23,913.90.

11. After negotiations, Ms. Winston and Trustee agreed (the "Settlement Agreement"), subject to Court approval, that¹ Ms. Winston would waive and disclaim her Life Insurance Exemption in exchange for the Trustee's abandoning the Interest in the Property such that the Cash Value (in the amount of \$32,143.90) would be available for Trustee to distribute to holders of valid, timely filed claims under 11 U.S.C. § 726.

12. On February 4, 2020, Trustee filed a settlement motion [Doc. No. 39], and on March 9, 2020, the Court entered an order [Doc. No. 42] granting the settlement motion and approving the Settlement Agreement.

13. After much effort, including numerous emails and telephone calls to the life insurance company, Trustee has liquidated the Policy and recovered \$1,365.75 more than the \$32,143.90 that the Bankruptcy Estate was entitled to under the terms of the Settlement Agreement.

14. Trustee requests an order from the Court authorizing him to pay Ms. Winston this \$1,365.75 excess. In this regard, Trustee respectfully requests that the Court enter an order substantially in the form of the order attached hereto and incorporated herein by reference as Exhibit "A."

WHEREFORE, Trustee respectfully requests that the Court:

(a) Enter an order substantially in the form of the order attached hereto as Exhibit "A"

¹ The following is a summary of the terms of the Settlement Agreement. The exact terms of the Settlement Agreement are set forth in Exhibit "A" attached to the settlement motion [Doc. No. 39].

and authorize Trustee to pay \$1,365.75 to Ms. Winston; and

(b) Grant such other and further relief as the Court deems just or appropriate.

Respectfully submitted this 21st day of September, 2020.

ARNALL GOLDEN GREGORY LLP
Attorneys for Chapter 7 Trustee

171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363-1031
(404) 873-8500

By: /s/ Michael J. Bargar

Michael J. Bargar
Georgia Bar No. 645709
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EXHIBIT "A" FOLLOWS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 7
: :
SHARON MARIE WINSTON, : CASE NO. 15-66160-JRS
: :
Debtor. : :
: :

**ORDER GRANTING TRUSTEE'S MOTION TO PAY EXCESS LIFE INSURANCE
PROCEEDS TO DEBTOR**

On September __, 2020, S. Gregory Hays, as Chapter 7 Trustee ("Trustee") for the bankruptcy estate (the "Bankruptcy Estate") of Sharon Marie Winston ("Ms. Winston"), filed *Trustee's Motion to Pay Excess Life Insurance Proceeds to Debtor* [Doc. No. __] (the "Motion") seeking an order authorizing Trustee to pay Ms. Winston \$1,365.75 in excess cash value of a certain Life Insurance Policy¹ over and above what the Bankruptcy Estate was entitled to under the terms of a Settlement Agreement previously approved by order of the Court.

¹ Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion [Doc. No. __].

Having considered the Motion, and for good cause shown, it is hereby
ORDERED that the Motion is **GRANTED**: Trustee is authorized to pay Ms. Winston \$1,365.75 in excess funds that Trustee received from the cash value of the Life Insurance Policy.

[END OF DOCUMENT]

Order prepared and presented by:

ARNALL GOLDEN GREGORY LLP
Attorneys for Trustee

By: _____

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Atlanta, GA 30363
Telephone: (404) 873-7030

Identification of parties to be served:

Office of the United States Trustee
362 Richard B. Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

S. Gregory Hays
Hays Financial Consulting, LLC
2964 Peachtree Road, Suite 555
Atlanta, GA 30305

Sharon Marie Winston
1117 Berryhill Drive
Lithonia, GA 30058

Lauren A. Drayton
The Semrad Law Firm, LLC
303 Perimeter Center North, #201
Atlanta, GA 30346

Michael J. Bargar
Arnall Golden Gregory LLP
171 17th Street, NW, Suite 2100
Atlanta, GA 30363

CERTIFICATE OF SERVICE

This is to certify that I, Michael J. Bargar, am over the age of 18, and that I have this day served a copy of the forgoing *Trustee's Motion to Pay Excess Life Insurance Proceeds to Debtor* by first class United States Mail, with adequate postage prepaid, on the following persons or entities at the addresses stated:

Office of the United States Trustee
362 Richard B. Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

S. Gregory Hays
Hays Financial Consulting, LLC
2964 Peachtree Road, Suite 555
Atlanta, GA 30305

Sharon Marie Winston
1117 Berryhilll Drive
Lithonia, GA 30058

Lauren A. Drayton
The Semrad Law Firm, LLC
303 Perimeter Center North, #201
Atlanta, GA 30346

This 21st day of September, 2020.

/s/ Michael J. Bargar
Michael J. Bargar
Georgia Bar No. 645709